

**JUAN CAILLES, PETITIONER AND APPELLEE, VS. FELICIANO GOMEZ AND APOLINAR BARBAZA, RESPONDENTS. FELICIANO GOMEZ, APPELLANT.***G. R. No. 17617. December 09, 1921*

Ponente: VILLAMOR, J.

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It appears from the record that at the general elections held in the Province of Laguna on June 3, 1919, Feliciano Gomez, Juan Cailles, and Apolinar Barbaza were the only candidates for the office of provincial governor. On the seventh day of said month the provincial board, acting as a board of canvassers officially proclaimed that Feliciano Gomez had received 9,233 votes, Juan Cailles, 9,125, and Apolinar Barbaza, 2,668, the result, therefore, being that Feliciano Gomez had been elected to the office of provincial governor.

Juan Cailles filed a motion of protest within two weeks after the proclamation of the result of the election, and after notice to the other two candidates voted for, he contested the election of Feliciano Gomez. The protestant alleges in his protest that in the only precinct of the municipality of San Pedro and in the two precincts of the municipality of Bay numerous frauds, irregularities and violations of law were committed and that improper and illegal counts were made there as well as in the other precincts of the different municipalities of the province; and he, therefore, prayed that the election of Feliciano Gomez in the precincts of San Pedro and Bay be annulled, and that the protestant be declared legally elected to the office of provincial governor, after making a new count of the votes cast and the correction of the returns made by the boards of election inspectors of the various electoral precincts affected. Feliciano Gomez filed an answer containing various special defenses as well as a counter-protest in which, for the reasons therein stated, he prayed for the annulment of the election held in the fifth precinct of the municipality of Nagcarlan and that the protest be dismissed with costs against the protestant.

The trial of this case was protracted and beset with numerous incidents due to the different allegations contained in the protest and counter-protest. After 562 witnesses had testified in court and numerous exhibits, appearing in the record, had been filed, the court rendered judgment on March 18, 1921, declaring that the protestant Juan Cailles was legally elected provincial governor of Laguna with a plurality of 8,797 votes against the protestee Feliciano Gomez, who received 8,568 votes and the other protestee Apolinar Barbaza, who received 2,668 votes.

From this judgment the respondent Feliciano Gomez duly appealed to this court.

The questions of law raised in the briefs of both parties refer to the following matters: (1) The power of the court to allow amendments to the protest or to the answer; (2) probative value of the count made by the election inspectors; (3) nullity of an election by reason of irregularities committed thereat; (4) nullity of the vote cast by an illiterate or incapacitated who failed to take the required oath; and (5) consideration to be given to the ballots.

We shall dispose of the questions relating to these matters in the order above given.

First question: When should amendments be made to the motion of protest or to the answer?

It appears from the record that the protestant during the trial asked the court on December 1, 1920, to be allowed to amend his motion of protest, alleging that in the municipality of Lilio, the ballots of certain illiterate voters, who did not take the oath of their incapacity to prepare their ballots, were counted in favor of the protestee. This motion was denied by the judge who, nevertheless, stated his opinion that the proposed amendment could be considered as an amendment to the protestant's replication to the counter-protest of the protestee. The motion having been presented anew in the sense indicated by the court, it was allowed as an amendment to said replication.

The appellant assigns the action of the court in allowing this amendment as error.

"In the absence of a statute regulating the mode of procedure, where jurisdiction of an election contest has been obtained by giving proper notice to the contestee, the court has power in its sound discretion to permit amendments to pleadings in election contests, and such discretion is not reviewable on appeal. In some of the states an amendment may be made under the provisions of the statute applicable to the amendment of pleadings in civil actions, but in others it is held that this cannot be done, and that if the election statute does not provide for amendments the court has no power to allow them, at least where the proposed amendment is one of substance. Generally, however, amendments as to form and substance, not introducing new matter, may be allowed on due application, and statutes authorizing amendments will be liberally construed in order that the contest may be determined on its merits. Thus where petitioners have in fact the qualifications required by statute the failure of the petition so to allege is amendable; and if the statement of grounds of contest or the response thereto, lacks the necessary clearness and distinctness of allegation, an amendment is properly allowable. But the court should not permit an amendment by striking out a part of the petition which admits material facts, where the effect of such amendments would be to throw the burden of proving those facts upon the other party.

"Except in jurisdictions where election contests are governed by the general rules of chancery practice, the general rule is that the notice or pleadings cannot be amended so as to introduce new parties, or new grounds of contest, at least after the time for filing the original pleading or notice has expired; and this is especially true where no good reason is given for not presenting the new matter in the original pleading." (20 Corpus Juris, p. 234.)

In the order of the court above referred to, it is stated that the new fact alleged in the amendment to the protestant's replication was unknown to him at the time that he presented his original protest. Nevertheless, in view of the advanced stage of the proceedings when the said amendment was filed, we are of the opinion that it was too late to be properly admitted.

In the case of *Arnedo vs. Llorente and Liongson* (18 Phil., 257), this court held that the rules of procedure applicable to ordinary civil suits are applicable to election protests filed under section 27 of the former Election Law (now sec. 481 of the Administrative Code) only when they are not inconsistent with the provisions of said section or serve the purpose of supplying a need not provided for in the procedure outlined, in general form, in said section. But considering the urgent necessity of dispatching this class of cases in order, as soon as possible, to enforce the will of the voters, and there being no provision in the election law as to the time for filing amendments, we are of the opinion that they should be presented within a reasonable time before the commencement of the trial, unless special reasons exist for their presentation after trial has begun.

The appellant alleges that this error of the court has prejudiced the rights of the protestee, for the reason that the admission of said amendment resulted in discounting 157 votes from the protestee in precincts Nos. 1 and 3 of the municipality of Lilio. But such injury does not exist inasmuch as the votes to which he refers are adjudicated to the protestee, as will be seen in the solution of the question relative to the votes of illiterate and incapacitated voters. We, therefore, conclude that even admitting that the trial court erred in this respect, such error did not

prejudice any substantial right of the protestee nor did it, in any wise, affect the result of the election in said municipality of Lilio.

Second question: The probative value of the ballots having been lost because of the violation of the ballot boxes, what is the best evidence as to the result of an election in any given precinct?

The appellant alleges that the court erred "in not taking into consideration the votes cast in favor of the protestee Gomez in the first precinct of Nagcarlan, as shown by the oral evidences, it being proved that the ballot boxes had been violated and that the returns are false and incorrect, and in adjudicating to the protestant Cailles votes in this precinct not shown to be for him."

This assignment of error involves a question of fact which must first be determined, to wit: Whether the election returns of said precinct are incorrect and 'false. From what appears in the record the election in this precinct has not been the object of protest by any of the parties in their original pleadings. Discussion upon the point arose only when on November 22, 1920, the, ballot box of this precinct was opened for the sole purpose of finding the ballot of one Carlos Vita, in relation to his testimony given at the investigation of the fifth precinct of Nagcarlan. Then ballots Exhibits 7-15 were found which purported to be votes cast for different candidates and fifty other unofficial ballots.

The parties agreed that the box had been tampered with without any of them participating therein. No evidence has been presented as to the falsification of the returns of this election precinct. The appellant's conclusion that said returns are false is based upon the difference found by him between the number of persons who registered as electors and those who cast their votes in relation to the number of votes cast as shown in the returns. We have carefully considered the election returns in question together with the tally sheets and the certificate of the board of inspectors and we are convinced that the returns are authentic. From the revision we have made of said exhibits, we have found that two electors were not given registration numbers, while there are many others who have been given duplicate registration numbers; and this explains the differences noted by the appellant. Withal, we must say that the total number of voters who cast their votes is as appears in the tally sheets and in the partial sums given by the inspectors to each candidate for the office of governor. These partial sums give a total of 520 votes cast instead of 515 that appear in the returns made by the board of inspectors. This slight difference, however, does not indicate falsity but only an innocent mistake which very easily may, and should, be corrected, for it is a fundamental rule in accounting that the sum total depends upon the value of the amounts added and not vice-versa.

The authenticity of the election returns being thus brought out, the question of law presented by this assignment of error is: It having been admitted that the ballot box had been tampered with, what should prevail in determining the number of votes received by the candidates for the position of governor in said precinct? The appellant urges that in this case the result should be determined by the testimony of the electors who took the stand, and not by the result shown in the return.

In the case of *Rhode vs. Steinmetz* (25 Colo., 308), the court laid down the following doctrines:

"In an election contest the ballots cast by the voters is the primary and best evidence of the intention of the voters, but the burden of proof is on the contestor to show that the ballots have been preserved in the manner provided by law and have not been tampered with, and the fact that the ballots have been in the custody of the proper officers from the time of the canvass to the time of the recount is only prima facie and not conclusive proof of their integrity.

"In an election contest the rule that as between the ballots and the canvass of them, the ballots control, has no application where the ballots have been tampered with. The court must be sure that it has before it the identical

and unaltered ballots deposited by the voters before they become controlling as against the certificate of the election officers of the result of the canvass."

The same doctrine holds in other jurisdictions:

"Where an official count has been made, it is better evidence of who was elected than the ballots, unless he who discredits the count shows affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution." (Davenport vs. Olerich, 104 Iowa, 194.)

"The law is well settled that the burden of proof is on the plaintiff, when he seeks to introduce the ballots to overturn the official count, to show affirmatively that the ballots have not been tampered with, and that they are the genuine ballots cast by the voters." (Fenton vs. Scott, 17 Ore., 189.)

In the case of Cogan vs. Beard (65 Cal., 58), the court said:

"In an action to contest the right of a party to an office to which he has been declared elected, the returns of the election boards should be received as prima facie true. In order to overcome this evidence by a recount of the ballots cast at the election, the contestant must affirmatively prove that the ballots have not been tampered with, and that they remained in the same condition as they were when delivered to the proper custody by the judges of election. If it appear to the satisfaction of the court that the ballots have not been tampered with, it should adopt the result as shown by the recount, and not as returned by the election board."

The same doctrine is followed in the case of Tebbe vs. Smith (108 Cal., 101). In the course of the decision the court said (p. 107):

"The principles of law and the rules of evidence governing cases such as this have been so often declared that a review of the many authorities is unnecessary. Those curious or interested in pursuing the subject will find in the reporter's notes, preceding, many instructive cases collated by the industry of counsel. Suffice it here to say that, while the ballots are the best evidence of the manner in which the electors have voted, being silent witnesses which can neither err nor lie, they are the best evidence only when their integrity can be satisfactorily established. One who relies, therefore, upon overcoming the prima facie correctness of the official canvass by a resort to the ballots must first show that the ballots, as presented to the court, are intact and genuine. Where a mode of preservation is enjoined by the statute proof must be made of a substantial compliance with the requirements of that mode. But such requirements are construed as directory merely, the object looked to being the preservation inviolate of the ballots. If this is established it would be manifestly unjust to reject them merely because the precise mode of reaching it had not been followed.

"So, too, when a substantial compliance with the provisions of the statute has been shown, the burden of proof shifts to the contestee of establishing that, notwithstanding this compliance, the ballots have in fact been tampered with, or that they have been exposed under such circumstances that a violation of them might have taken place. But this proof is not made by a naked showing that it was possible for one to have molested them. The law cannot guard against a mere possibility, and no judgment of any of its courts is ever rendered upon one."

The probative value of the result of the return made by the board of inspectors is a question already settled at various times by the courts of the United States. In the case of Oakes vs. Finlay (5 Ariz., 390), the following doctrine was laid:

"The returns of an election board, when legally and properly authenticated, are not only conclusive upon the board of canvassing officers, but are also prima facie evidence of the number of votes cast, in a proceeding to contest the election; and the burden of proof is upon the person who assails the correctness of these returns."

In the case of Stafford vs. Sheppard (57 W. Va., 84), the court said:

"Certificates of the result of an election, made by the commissioners at the precincts, are prima facie evidence of the result of the election. The ballots, if identified as the same cast, are primary and higher evidence; but, in order to continue the ballots as controlling evidence, it must appear that they have been preserved in the manner and by the officers prescribed by the statute, and that, while in such custody, they have not been changed or tampered with."

"Although the general rule," says McCrary in his Treatise on Elections, paragraph 474, "is that the ballots themselves are the best evidence of the number of votes cast, and for whom cast, yet this rule can have no application to a case where the ballots have been tampered with after they were deposited in the ballot box. In such a case the value of the ballots as evidence is almost totally destroyed, and the returns made by the officers of election presiding at the polls may become better evidence than the ballots." (*Andrews vs. Judge of Probate*, 74 Mich., 278; *Bisbee vs. Finley*, 2 Ells., 172.)

In support of his contention the appellant cites that part of the decision in the case of *Manalo vs. Sevilla* (24 Phil., 609), regarding the kind of evidence that must be introduced to prove that a person has been elected to a provincial office. The Supreme Court held that it should be the certificate or proclamation of the provincial board of canvassers. If this cannot be secured, secondary evidence of its contents may be presented. And if this is not possible, perhaps, under special conditions, the data furnished by the boards of inspectors of the province might be admitted, though it would be evidence of the third order. But the court further adds: "Even then, it is extremely doubtful if such statements could be accepted." We are of the opinion that such doctrine is not applicable to the case at bar. The question here under discussion is: It being admitted that the ballot boxes have been tampered with, or, in other words, the ballots having lost their probative value, what is the best evidence of the result of the election in a particular precinct?

The appellant cites the case of *Dayrit vs. San Agustin and Valdez*, 40 Phil., 782, to show his right to prove by means of the testimony of electors the votes which they had cast. In that case the court said:

"The right to examine the voters after they have declared a willingness to testify, when ballot boxes have been tampered with after the election, is an affirmance and vindication of the essential principle of the election system—that the will of the majority of the qualified electors shall determine the right to an elective office."

It is evident, according to this doctrine, that when the ballot boxes have been tampered with, the interested parties in an election protest may present the voters as witnesses to show how they voted and thus corroborate the election return.

Indeed, the court in that case of *Dayrit vs. San Agustin and Valdez*, supra, says:

"Subsequent changes in the ballots should not be permitted to affect the result of the election in order to destroy the will of the majority of the qualified electors."

In the case at bar the fact that subsequent alterations of the ballots have taken place should not have the effect of affecting the result of the election, by granting to the testimony of witnesses a probative value superior to that of the official count made by the board of election inspectors. In such case, the count made by said board is the best evidence of the result of the election. We are therefore of the opinion and so hold that under the circumstances set forth, surrounding the holding of the election in the first precinct of Nagcarlan, where the ballot boxes were tampered with and where there has been fraudulent introduction of ballots, the returns constitute the best evidence for determining the result of that election, and consequently the court did not err in abiding by the result contained in the returns of said precinct.

Third question: Do the irregularities committed at the election held in the fifth precinct of Nagcarlan justify the annulment of said election ?

One of the errors assigned by the appellant refers to the failure of the court to annul the election held in the fifth precinct of Nagcarlan. We quote the pertinent part of the appealed judgment:

"A couple of days were spent in submitting evidence with respect to this precinct, due to the numerous irregularities which are alleged by the protestee to have been committed there during the day of the election. According to the amended answer, 'the booths in the fifth election precinct of Nagcarlan were not arranged and constructed according to the form required by the law to such an extent that the secrecy of the ballot was violated; the voters were not permitted to approach freely the respective polling places; the secrecy of the right of suffrage was violated, the electioneers, agents and adherents of the protestant having personally intervened and seen the preparation of the ballots of almost all the voters, in order to compel, as they in fact did compel, numerous electors to vote for the protestant, who was then in power as chief executive of the province of Laguna, said electioneers, agents and followers of the protestant having electioneered, threatened, forced, and offered within and outside of the polling places, appointments and concessions of public favors in exchange for the votes.' But the court, after hearing and examining all the evidence upon the matter, finds and declares as proved, the following only:

"The booths, indeed, were not the most appropriate, because they consisted of folding screens placed against the walls of the house that was used as a polling place, and being folding screens, they opened and closed at the will of the elector using them. There were times when one or the other of these screens fell to the floor by reason of the force of the wind or the carelessness of the voters, thus completely presenting to view the voter who was inside preparing his ballot, but it is to be presumed that the inspectors themselves, if not the voters, had again picked up the screens and put them in their original position.

"Some of these booths were placed next to a window, and the window opened into the balcony of the adjoining house. From this balcony the voter who was voting in the booth could naturally be seen, but no witness has come to declare that from the contiguous balcony he was able to read or see what the elector wrote on his ballot. The house used as a polling place is of very small dimensions, with galvanized iron roof, and the day of the election was rather hot. Some electors, in order not to suffer this inconvenience, and others, who were really in a hurry because they had to bury a deceased, as soon as their turn to vote came and they were furnished with their corresponding ballots, instead of entering the booth which was still occupied by a voter, went to the window, and, laying down his ballot upon the sill, wrote and filled it there.

"The inspectors adopted the practice of calling the voters by groups of eight, and, in order to facilitate voting, ordered one group of eight to wait near the inspector's table while the first eight occupied the respective booths. At the door or stairs there was a policeman on duty to call the groups of voters, and with orders not to permit anyone to come up until called; but it happened that at meal time the policeman abandoned his post and returned at about 2 o'clock in the afternoon. During this short absence the voters entered the polling places in disorder, whether called or not, and then at the waiting place a greater number than that permitted assembled. During the same hours that the policeman on duty was absent there were persons under the polling place who were busy electioneering.

"Coming back to the matter of the booths, it appears that they were situated only a very short distance from each other, and an elector voting in his booth could see the other elector in the next booth also busy upon the same object. There is no doubt that the electors who prepared their ballots on the window could see each other.

"Everything else that appears from the testimony of the witnesses for the protestee is an exaggeration because they were drafted from, so to speak, if not taught, in the barrio of Manaol, by Francisco L. Cruz, agent for the protestee. More than once during the trial of this case the protestant called the attention of the court complaining against the conduct of certain agents of the protestee who locked themselves with the witnesses in the office of the provincial governor and from there passed directly to the court room upon being called to testify. The court therefore cannot give full credit to the testimony of these witnesses.

"Granting for a moment that in this precinct drunken electors had entered and voted and that at times, on account of their hurry, two of them entered a booth together and there, seated one beside the other, prepared their respective ballots, this in connection with the irregularities hereinbefore found as proven, falls far short of being a sufficient cause for annulling the election. In this polling place there was no election or peace officer who electioneered or forced the electors, or who had even attempted to discover the secret of the ballot of anyone. Here nobody was prevented from exercising the right of suffrage, and the will of the voting public was in no wise defrauded. If indeed some electors have seen the ballots of others, this was certainly accidental, and was not done with any intent to prejudice or favor any candidate, much less to defeat the candidacy of any person in order to assure the triumph of another. All the irregularities committed were due partly to the defective conditions of the polling place and the screens, as well as to the remissness of the police and perhaps to a little negligence on the part of the board of inspectors. It is not proper to annul the election for this reason only."

After a careful review of the evidence, we find that the findings of fact and of law upon this point in the judgment appealed from are in accordance with the merits of the case, and we must say that the action of the trial judge was correct in upholding the validity of that election. The irregularities observed by the trial judge have in no way affected the result of the election, nor has it been proven that any elector has been deprived of his right to vote, nor that the secrecy of the ballot has been violated.

"Where an election appears to have been fairly and honestly conducted, it will not be invalidated by mere irregularities which are not shown to have affected the result, for in the absence of fraud the courts are disposed to give effect to elections when possible. And it has even held that gross irregularities not amounting to fraud do not vitiate an election. Where the legislature declares a certain irregularity in election procedure to be fatal to the validity of the returns, the courts will effectuate that command. And the whole conduct of election officers may, although actual fraud be not apparent, amount to such gross negligence and such a disregard of their official duties as to render their return unintelligible or unworthy of credence. But the power to throw out an entire division is one which ought to be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or where the great body of the voters have been prevented by violence, intimidation, and threats from exercising their franchise." (15 Cyc, p. 372 et seq.)

"\* \* \* Irregularities and noncompliance with constitutional or statutory provisions in the conduct of an authorized election do not necessarily render the election void \* \* \*. It is a rule very generally recognized that the misconduct of election officers, or irregularities on their part, will not vitiate an election, unless it appears that the result was affected thereby." (10 Am. & Eng. Encyc. of Law, pp. 567 and 670.)

"In a contested election case, very little attention should ordinarily be paid to mere irregularities in the proceedings of the election officers which do not affect the real merits of the case. Thus, it was held by the Court of Appeals of New York, in *People vs. Cook*, that where the evidence goes only to show an irregularity without fraudulent intent, and by which nobody is injured, the Court is not bound even to submit it to the jury as an open question.

"The officers of election may be liable to punishment for a violation of the directory provision of a statute, yet the people are not to suffer on account of the default of their agents." (McCrary on Elections, pars. 222 and 228.)

We therefore conclude that the trial judge did not err in declaring that the election held in the fifth precinct of Nagcarlan was valid.

Fourth question: Did the court err in annulling the election in the second precinct of Bay?

Such is the question raised in the 6th assignment of error of the appellant.

The trial judge who decided this protest in the first instance states the following in his decision:

"The second precinct of Bay was installed in an unsuitable place, in a small palay storehouse and very near the road leading from Bay to Los Baños, and the booths set up inside were also unsuitable; they hardly possessed the conditions which the law requires in order to protect, even in substance, the secrecy of the ballot.

"The board of inspectors that conducted said election was composed of Messrs. Jovino Villapando, Alejandro Cailao, Claudio de Leon, and Nicomedes Ramos. The first, who is a member of the Democrata Party, was the president, the second and third members of said board, were affiliated with the Nacionalista Party, and the last was the clerk of the board. The real party affiliation of the clerk is unknown, but he has strong leanings for the Nacionalista Party.

"During the voting hours which lasted from 7 in the morning until 6 in the afternoon the following irregularities were observed: Inspectors Cailao and De Leon took away from the electors their ballots as they came out of the booths before depositing them in the boxes, snatched and opened them to read them, and upon finding that they had voted for Juan Sumulong for Senator, Juan Cailles for governor and Dalmacio Dimaculaiigan for municipal president, they tore and threw them into bits upon the floor near the tables of said inspectors. The voters naturally protested against such acts, but the inspectors answered them 'your ballots are marked,' and then would immediately add: 'Get other ballots that are clean and change those that you had, and don't vote for Sumulong because he is not from this province, nor for Cailles because he is old, nor for Dimaculangan because he is rich, you should vote for Senator Guevara, a native of this province, Feliciano Gomez who is young, and Julian Carrillo because he is poor.' The majority of the electors whose ballots had been snatched away and torn in this manner left the polling place and did not vote, and only very few took new ballots again and filled them in the booths and then deposited them in the box.

"Said inspectors have committed other illegalities. During the voting hours they entered the booths one by one, approached the electors and looked at what they were writing upon their ballots, and would tell them: 'Vote for Feliciano Gomez for governor and Julian Carrillo for president.' In a satchel under the table they had several official ballots already filled which they delivered to some electors who were going to the booths. Alejandro Cailao delivered four of them to the protestee Julian Carrillo when the latter approached the door of the precinct.

"Jovino Villapando, president of the board, as well as Ramon Santos, a watcher who was in the polling place, protested against this practice of the said inspectors, but the latter said: 'We answer for everything that may happen.' The chairman asked that his protest be made to appear of record; but the other inspectors answered him saying: 'We will settle your proposition by vote,' and Villapando could do no more, as he was the only representative of the minority against the said inspectors and the secretary who belonged to the majority.

"On that day about forty illiterate electors had gone to vote and did vote; and as they did not take the oath of their illiteracy before being aided in the preparation of their ballots, the chairman Villapando called the attention of his comembers to the fact that said illiterates should be required to take the oath, but the inspectors paid no attention to him, always telling him as usual: 'We answer for everything.' Villapando protested and asked that his protest against the lack of said oath be made to appear in the minutes, but his coinspectors challenged him to a vote, and he necessarily had to keep silent.

"About 4 o'clock in the afternoon, outside of the election precinct, but in a place rather near, as it was the place where the electors, before being called to the polling place, used to gather, one Francisco L. Cruz, an active agent of the Nacionalista Party was there and he would call the electors and would electioneer them in order that they should vote for Feliciano Gomez and Julian Carrillo, and to this effect he gave them official ballots already filled. The elector Emilio Dictado, who happened to pass by that place on his way to the precinct, met Francisco L. Cruz and the latter took from his pocket an official ballot already prepared and delivered it to

Dictado with instructions that, upon entering in the precinct in order to vote, he should deposit it in the box and in turn, upon leaving the place, he should take with him for Cruz the ballot which the inspectors would give him. Emilio Dictado received the ballot from Cruz, entered the polling place; asked for an official ballot from the inspectors, filled it with the names of his candidates, doubled it and deposited in the box, but kept that which Francisco L. Cruz had given him and, upon leaving the polling place, went directly to the house of the protestant in the municipal election protest Dalmacio Dimar culaiigan, his candidate and relative, and delivered to him the ballot which Cruz gave him and related all the talk he had with the latter. The ballot in question was exhibited during the trial and was marked Exhibit K.

"The parts of the ballots, which the inspectors Cailao and De Leon had torn, were picked up in a place near the polling place after the day of the election and have now been presented in evidence as Exhibits G and H in order to show that they are ballots in which Juan Cailles and Dalmacio Dimaculangan were voted for governor and municipal president, respectively, and that they are forty-seven in number. Other fragments were taken up by Agustin Villapando, but were not presented in evidence.

"The day following the election and shortly after mid-day one Valentin Punsal, who was then municipal secretary of Bay, went to the election precinct where he found the chairman and the members of the board apparently taking a rest, for they were not doing anything, and he told them: 'Finish your work quickly.' Punsal, forthwith, took from Jovino Villapando the key of the boxes and, opening the same poured their contents, looked for the marked ballots and mixed them with the clean ones. The witness Pedro Villapando, page 155, fourth part of the stenographic notes, declaring upon this point and referring to Valentin Punsal, states the following: 'He poured over the table the contents of the box which contained more ballots. He also opened the box which contained the useless and marked ballots. After having emptied the two boxes, the unmarked ballots were put on one side and the ballots said to be marked on another side. After this he gathered the ballots said to be marked and mixed them with the unmarked votes, but those ballots were not marked; after that the secretary separated those ballots by bundles, tied them with rubber bands and then placed them in the box destined for valid ballots. Ballots said to be marked, only about 7 or 8, were taken out and put in the box for void ballots. After that I left and went home to rest, and the inspectors remained there taking their rest doing nothing but chatting and laughing.'

"Finally, after the voting had been finished, and before proceeding with the count of the votes, the election inspectors counted the ballots, and the result was that 57 ballots were lacking, that is, 2 of the ballots used and 55 of the official ballots which were not used. In the lists of this precinct it appears that the inspectors did not record the numerical order of voting. The statements of the result of the election were not drafted nor written in the election precinct but out of it—in the municipal building where inspectors Cailao and De Leon took the ballot boxes, and there prepared the statement in the absence of the chairman Jovino Villapando.

"In view of the facts proved which have just been stated, the court has no other recourse but to annul the municipal election in the second precinct of Bay. There the secrecy of the votes was not duly protected but was, on the contrary, violated. The booths had no doors, and the inspectors went inside the booths in order to do electioneering work and read what the elector was writing. The booths were placed almost jointly with the wall of the storehouse, but in these walls there were many crevices, as they were made of bamboo splits, and from the outside any person, who approached the polling place, could see through them the elector who was voting inside the booths. The will of many electors was defrauded because they were not allowed freely to vote by writing the names of the candidates chosen by them, but the ballot was given to them already filled or prepared. Coercion was practiced upon many electors by snatching away from them their ballots against their will and tearing them into pieces after reading them. Many of the same electors, who were offended with this practice indignantly left for their homes instead of asking for new ballots in order to vote again, and thus they were prevented from voting. One of these electors, testifying as a witness, says: 'Why ask for a new ballot if after filling it they would again tear it into bits.' There, electioneering was permitted within the booths, and the greatest disregard of the law was shown, the inspectors refusing to administer the oath to the illiterates,

although their attention was called to its necessity, and the same inspectors also refused with the greatest cynism, to record any kind of protest against those illegal proceedings. There, in the view of the voters and watchers, and with unsurpassed shamelessness, official ballots were being delivered for the use of a particular candidate. And, lastly, there, the provisions of the law with respect to the mode of conducting an election, of keeping the registration lists, and preparing the certificates of election have been totally ignored; there, one person was even permitted, after the ballot boxes were locked with key, to open them and tamper with the ballots by mixing them together.

"By reason of these series of frauds and illegalities, it is impossible now to determine what is the true result of the election. The ballots of 40 illiterates who voted were confused with those of other electors, and it is not now possible to separate them from each other, because they have not been identified. Although only 47 of them were presented, it is inferred from the evidence that the ballots torn into pieces amount to at least 60, and as the greater part of the electors, from whom these 60 ballots were taken away, refrained from voting because of their disappointment and indignation, it also becomes impossible to determine how many electors really voted, and how many did not vote account of the threats and arbitrary conduct of the inspectors. Neither can we now determine how many are the votes or ballots, the secrecy of which has been violated in the booths by the inspectors Cailao and De Leon; and much less can we determine how many official ballots, which the leader Francisco L. Cruz had in his pocket already prepared, he was able to introduce from the outside into the ballot boxes to substitute, and falsify the popular will. Neither the certificate nor the contents of the ballot boxes offer any guaranty whatsoever. The first were prepared outside of the polling place and, in the absence of the chairman, the contents of the boxes, as already stated, have been tampered with. With this shameless catalogue of frauds, violations and assaults against the Election Law, it must necessarily result in the nullity of the municipal elections of the second precinct of Bay."

We have attentively examined the evidence before us and we find no ground sufficient to justify us in altering or modifying the conclusions of the trial judge. The question we are called upon to resolve is whether the irregularity committed in the election of the second precinct of Bay are of such gravity as to justify the solution adopted by the trial court.

In the case of *Manalo vs. Sevilla* (24 Phil., 609), this court annulled the election of the electoral precinct of Jalajala by reason of the irregularities committed therein, to wit:

"(1) The registry lists were improperly prepared and signed; (2) not enough voting booths were prepared and furnished; there should be a booth for every 50 voters and one for a fractional part thereof; (3) the ballot boxes were not presented to the public for inspection prior to the opening of the polls as required by law; (4) no person, aside from the election officials, was permitted inside the polling place except the person engaged in casting his ballot; (5) voters were not permitted freely to approach and enter the polling place or witness the balloting as required by law; (6) voters and the public generally were prohibited from approaching the polling place or entering the same; (7) voters desiring to vote were not permitted to approach or enter the polling place except in alphabetical order, and then only singly and as called by the policemen guarding the entrance; (8) the entrance to the polling place was guarded by officers of the law under instructions from the election officials to permit no one to enter except those designated by such officials; (9) the election was carried on as follows: The chairman of the board of inspectors called the name of a voter; the name was taken up by the policemen guarding the door and repeated to the body of voters which was kept waiting thirty meters from the polling place; the voter whose name was called, if present, thereupon stepped forward and was permitted to enter the polling place and vote; after he retired another name was called and the process repeated; the election in such precinct must be held void and of no effect."

In *Gardiner vs. Romulo* (26 Phil., 521), this court says:

"The requirements of the Election Law providing for the location of polling stations and the construction of booths and guard rails for the latter may be departed from in some particulars and yet preserve in substantial

form the secrecy which the law requires. But the failure to provide doors and guard rails for the booths and the placing of the writing shelf so that it faces the side instead of the rear of the booth are, combined, a fatal disregard of the law, inasmuch as such an arrangement does not offer, even in substantial form, the secrecy and seclusion which, according to the purpose and spirit of the Election Law, is its most mandatory requirement.

"When the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast, the returns should be avoided."

And in *Garchitorena vs. Crescini and Imperial* (39 Phil., 258), this court maintained the following doctrine:

"Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts. They should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which do, in fact, defeat the true expression of the opinion and wishes of the voters of said municipality or precinct. The evidence in the present case shows an unmistakable intention and design on the part, not only of the election inspectors, but many of the voters, to defeat, by the methods adopted, the true expression of opinion, through the ballot, of the people of said municipality. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the whole return must be rejected. The rule is so well established that authorities need no longer be cited in its support that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected and those who are guilty of such frauds and irregularities should be punished to the very limit of the law."

The evidence shows that the secrecy of the right of suffrage has been violated in the second precinct of Bay; that the booths were not constructed in accordance with law; that the inspectors entered the booths in order to do electioneering and see what the voter was writing; that the will of many electors has been defrauded, because they were not allowed to vote freely, but ballots already prepared by the inspectors or leaders were delivered to them; that coercion has been exercised upon many electors by the election inspectors who snatched their ballots, tearing them into pieces after reading them; that by reason of this practice many of the said offended electors went to their houses instead of asking for new ballots in order to vote again; that the illiterate electors were not required to take the proper oath of their incapacity; that the registration lists and the election statements were not properly kept; and lastly, that the municipal secretary, after the ballot boxes had been locked, opened them and tampered with the ballots, mixing them altogether.

Adhering to the doctrine laid down in the decisions of this court above cited, we must affirm the resolution of the trial court, declaring the election of the second precinct of Bay null and void.

Fifth question: Is the resolution of the trial court discounting 30 votes from the protestee and awarding them to the protestant maintainable? Is it proper to annul the election in the municipality of San Pedro for irregularities committed during the holding thereof?

The claim of the appellant with respect to the election held in the municipality of San Pedro is that the 30 votes which the trial judge discounted from him and adjudicated to the appellee be restored to him. The latter in turn contends that said election should be annulled because of the grave irregularities committed at the time it was held. As to how said election was conducted in the said municipality, we find in the judgment appealed from the following narration of facts proven:

"During the day of the election the municipal chief of police Andres Imzon, in combination with the protestee Tiburcio Morando, who was then municipal president and candidate for reelection in the same ticket with Mr. Feliciano Gomez, who at the same time was candidate for provincial governor, and with the majority of the members of the election board, all of whom are members of the local Nacionalista Party, taking advantage of

the opportunity he had by reason of his position, assigned to him at the door which leads to the booths, for the purpose of keeping order, has been committing the following acts: He went to and from said door to each booth, for the purpose of seeing, as in fact he did see, what the electors were writing while preparing their ballots within the booths, and at the same time in order to influence them to vote for Feliciano Gomez for governor, and for Tiburcio Morando for municipal president. About 8 o'clock in the morning when one voter was leaving the booth he seized his ballots, pocketed it and at the same time substituted it with another already filled and prepared, which the elector received and deposited in the box. The elector protesting, said: 'This is not my ballot;' but the chief answered him: 'Yours is incomplete. It lacked the vote for provincial governor. Immediately afterwards he also seized the ballots of three electors who were leaving the booths in order to put them in the boxes and substituted them with others. And shortly afterwards when three electors entered the booths he met them, took their blank ballots, substituted them with three others already prepared and filled, and the said electors being already in their respective booths acted as if they were writing and afterwards upon leaving the booths deposited them in the box. This hour of the morning was highly productive of good results for the chief of police Andres Imzon, for the witness Jose Almeida declares that during the one half hour that he was in the precinct, awaiting his turn to vote he saw that Imzon had succeeded in seizing and substituting ballots in the manner already indicated in the case of no less than 20 electors. Between 9 and 10 o'clock in the morning he followed two electors, who were leaving their respective booths in order to deposit their ballots in the boxes, and upon overtaking them, he took their ballots and substituted them with two others already filled up, one for each of them and said to them: 'These are ballots which you must deposit in the box,' At 2 o'clock in the afternoon he approached a booth occupied by an elector who, after preparing his ballot, did not know how to double it, and the chief took said ballot, doubled and pocketed it, and in its place he put an official ballot upon the table of said elector.

'The activities of Andres Imzon were favored by the place and arrangement of the booths as well as by the position of the table of the inspectors and his connivance with them.

"The booths were installed in a room separated by means of a partition from the main room occupied by the table of the inspectors, the two rooms not having any other means of communication but a small door. Said two rooms were furthermore so situated that the inspectors could not from their table see the booths, or inform themselves of what was happening in the room where these booths were. In this separate room there were eight divisions called booths but in reality were no more than divisions of the space, formed by thin cloth suspended from above and perpendicularly extended to the walls; inside each of these divisions thus formed there was a writing desk, of the kind used by school children, for the polling place of San Pedro was precisely installed in the public school building; the elector sat on the table facing an open window and with his back upon the entrance to the booth, this entrance having no door or anything that could conceal or cover, at least, the elector that was within."

Accepting the preceding narration of facts as the true result of the evidence of record, it remains for us to determine whether the resolution of the trial court discounting from the protestee thirty votes and conceding them to the protestant is maintainable, or whether it is proper to reject all the votes of this municipality, in view of the irregularities committed at that election.

It appears clear from the evidence that at the election in question illegal votes were cast. Of course it cannot be determined exactly how many ballots were snatched by the policeman Imzon and how many electors were prevented from expressing their will freely, because the witnesses who testified upon these points, only gave their best calculation. There is neither positive proof that the votes discounted necessarily belonged to the protestant. For this reason, in the absence of a sure basis, we are of the opinion that the resolution of the trial court discounting votes from the protestee and conceding them to the protestant, is untenable. Let us now consider the case in relation to the irregularities committed at that election.

It is said that the number of useful ballots and of destroyed and unused ballots is 600, which is the same number

delivered by the municipal secretary to be used at that election, and that the thirty which, it is alleged, were seized by the chief of police Imzon are not among said ballots.

The explanation of this phenomenon may be found in the fact that policeman Imzon had the consent of the majority of the election inspectors; before the voting he aided them in counting the blank ballots; and, after the election, he helped them count the ballots that were piled on the table before the canvass began. If to this we add the fact that the president of the election board, Jose Morando, after delivering the boxes to the municipal secretary, retained the keys in his possession until the clerk of the court required the transmittal to him of said ballot boxes, with the aggravating circumstance that said Morando, had, while the boxes were in the municipal building in the custody of the policeman Imzon, tampered with the ballots, as may be inferred from the testimony of the municipal secretary, Serafin Ludovico, is it strange that the number of ballots delivered for the use of that municipality should be found correct? What object did Morando have in opening the boxes and tampering with the ballots? In any event, while the proceedings employed by Imzon and Morando in order to leave everything well arranged in appearance have not been cleared in the record, yet, the following facts remain unshaken: That in the only election precinct of San Pedro, the booths were not duly constructed in accordance with the law; that the election inspectors permitted policeman Imzon to enter the booths in order to influence the electors and see what they were writing; that on the day of the election and within the polling place, the same policeman seized the ballots of various electors, substituting them with others already prepared to be deposited in the ballot box; that before the count commenced, the inspectors poured the contents of the box upon a table, in the absence of the watchers; that the president of the board of inspectors kept the keys of the ballot boxes in his possession after the latter had been delivered to the municipal secretary.

If the election of San Pedro did not offer any other difficulty than the bad arrangement of the booths, so long as the construction thereof is in accordance with law, an essential requisite for the secrecy of the election, we would perhaps hesitate to adopt a measure as severe as that of rejecting the votes of a whole precinct. But the violation of the secrecy of suffrage and the deprivation of part of the electorate of their right to elect the public officers are transcendental matters affecting the purity of the election that we ought not to sanction it. The record, in our opinion, does not offer sure means for separating the good votes from the bad ones, and the impossibility of clearing this state of uncertainty places us in the hard necessity of having to reject the votes of that precinct. The courts have frequently announced the rule that when the fraudulent votes are so mixed with the legitimate votes that it cannot be determined how many were legal and how many were fraudulent, the returns of the election should be annulled. (State vs. Fulton, 42 Kan., 164.)

We are aware of the transcendence of our resolution, but, in the present case we are obliged to adopt it, in the exercise of the power which is given to this court by section 480 of the Administrative Code, because we know that it is essential for the life and stability of a democratic government to preserve, against all kinds of corruption or coercion, the purity and liberty of suffrage in the election of public functionaries. We believe it proper to repeat here the ideas expressed by this court in the case of Gardiner vs. Romulo, supra, when it said:

"We are aware of the seriousness of disfranchising the innocent electors of a whole precinct for acts done by others. We are not unmindful of the force of the argument that if courts set aside the returns from a precinct for light and trifling causes, it will encourage the unscrupulous to seek profit by the honest mistakes of election officers committed in the conscientious performance of their duties. On the other hand we appreciate the importance to the people of enforcing those statutory provisions which the legislature have provided to insure a free and undefiled expression of the popular will at the polls, to the extent that fraud may not flourish under the guise of honesty. The right of suffrage is of comparatively recent origin in this country. If at this early stage of its existence, the courts are to countenance such bold disregard of the law as was exhibited in the municipality of Camiling at the last general election, representative government will soon become a farce; a mere catchword

or an empty illusion. Regardless of the political unrest engendered by such deplorable litigation as the present and its enormous expense to the contestants, we are of the opinion that a firm stand against fraudulent elections must now be taken, once for all. If no encouragement is offered to vicious practices, they will, at least, never grow larger."

Sixth question: Is the vote of an illiterate or incapacitated person, who fails to take the required oath, valid?

The appellant assigns as an error of the trial court the discount from the protestee of the votes of illiterates of the first and third precincts of Lilio, and the failure to annul the votes cast by the illiterates in the tenth precinct of San Pablo.

As to the question whether the illiterate or incapacitated electors of said precincts have or have not taken the oath of their incapacity, it appears from the record, with respect to the tenth precinct of San Pablo, that the three election inspectors and some voters testified that the illiterates and incapacitated voters of that precinct did not take the proper oath of their incapacity while other electors testified that they did. The registration list was not submitted nor the list of illiterates or incapacitated voters of this precinct. The court held that the illiterates and incapacitated voters had taken the proper oath of their incapacity. In Lilio, in the first and third precincts, the inspectors and various voters testified that the illiterates and incapacitated electors took the proper oath of their incapacity, while other voters testified that they did not. Neither the registration list nor the list of illiterates was introduced in evidence. The court ruled that the illiterates and incapacitated voters of said precincts had not taken the required oath. Consequently in the case of San Pablo the court considered the votes of illiterates valid and adjudicated them to the respective candidates. On the other hand, in the case of Lilio, the court discounted from the contending candidates Cailles and Gomez the votes of the illiterates.

Upon examining the ballots of the precincts Nos. 1 and 2 of Cavinti and those of Nos. 1 and 2 of Longos, we have also found ballots of illiterates which have been discounted by the court from the respective candidates on the same ground that the said illiterates or incapacitated voters had cast their votes without having taken the proper oath.

There is no question as to whether fraud was committed in the preparation of the ballots of the said illiterates or incapacitated voters. There is neither any question as to the legal qualifications of said illiterates to vote. The real question here presented relates to the validity of the vote of an illiterate or incapacitated voter who casts his vote without taking the proper oath.

In the case of *Manalo vs. Sevilla*, supra, this Supreme Court said:

"Under the Election Law an illiterate voter, or other voter who through physical disability is unable to cast his ballot without assistance, should be required prior to voting to take oath as to his illiteracy or disability; and in case no such oath is taken he should not be permitted to vote. The oath is a condition precedent to his right to vote.

"To permit voters to receive assistance in casting their ballots without any evidence as to their disability would be to open the door, to some extent at least, to fraud, coercion, and intimidation, and to remove, to some extent, the secrecy of the ballot."

In *Paulino vs. Cailles* (37 Phil., 825), the court declared:

"(1) That the fact that incapacitated-voters had been permitted to vote without taking the oath did not invalidate the election, that the election inspectors who permitted incapacitated voters to vote without taking the oath of office may be prosecuted criminally; (2) that ballots which are marked before they are cast should not be counted, that ballots marked after they are cast should be counted; (3) that voting booths must be constructed so as to afford the voter an opportunity to prepare his ballot in secret."

And in *Luna vs. Rodriguez* (39 Phil., 208), the court held:

"When an incapacitated person offers to vote, the law requires: (a) That he take an oath to the effect that he is disabled and the nature of the disability, together with the fact that he desires the inspectors to assist him in the preparation of his ballot; (b) that a record of said oath shall be filed with the secretary with the other records of the board of inspectors after the election; and (c) when said oath is taken, then two of the inspectors, each of whom shall belong to a different political party may assist him in the preparation of his ballot. The ballot of an incapacitated person who voted without taking the oath, or was assisted by one inspector alone, or by two belonging to the same party, should not be counted if such ballot can be identified. In the absence of fraud, however, all of the ballots of the precinct should not be invalidated by the mere fact that the inspectors did not comply with their duty. Innocent voters should not be deprived of their participation in the election for a violation of the law for which they were in no way responsible. Incapacitated persons are usually persons who are unable to acquaint themselves with the provisions of the law. They are, therefore, absolutely dependent upon the advice and counsel of others. Generally, they have no idea whatever as to the form and requirements in casting their ballots. Their ignorance, however, does not relieve them from their responsibility under the law nor from the effect of their failure to comply therewith. It is the duty of the inspectors to see that the law is complied with by the voter before he is permitted to vote. If the inspectors violate the law, they should be punished criminally"

It is a well established doctrine of this court that the innocent electors should not be deprived of their votes by reason of the noncompliance by the election officers with the requirements of law as that which we are now considering. Although the requirement as to the oath of illiterates and incapacitated voters is mandatory before the election, nevertheless, it should be considered as directory only after the election. (*Luna vs. Rodriguez*, supra.) What is desired to be understood with this distinction is that if the vote of an illiterate person is contested before it is deposited in the box, on the ground that such person did not take any oath, or that he has been aided in the preparation of his ballot by only one inspector, such vote should not be admitted; but, after the vote has been deposited in the box, such an irregularity is not fatal. This court has never declared an election in a precinct null by reason of a mere irregularity of this character, without any accompanying proof of fraud.

In the case of *Luna vs. Rodriguez*, supra, it was said that the vote of an illiterate or incapacitated person who voted without the formal requisite of an oath, must be discounted from the votes deposited, if the ballot may be identified. Nevertheless, it must be remembered that when the court spoke of rejecting a ballot upon this or that ground, it undoubtedly took into account that the irregularity like that now in question was part of a fraudulent plan to frustrate the free expression of the will of the elector. When there is no evidence of fraud and it appears clear that the vote actually deposited expresses the will of the voter, the innocent voter should not be deprived of his right of suffrage by taking away his vote from the total number of votes counted. In the case at bar there is no evidence of fraud, and therefore we declare that the votes of illiterates in the municipalities of Lilio, Lofigos, and Cavinti are valid and must be counted for the respective candidates.

Seventh question; interpretation of the ballots:

The contest between the parties as to the construction of the ballots turns principally upon the admissibility or inadmissibility of a ballot by reason of the incorrect spelling of the name of the candidate or by a mark found on the ballot.

According to the Election Law, section 452 of the Administrative Code, the voter should write in the corresponding spaces the names of the persons for whom he desires to vote, and it is illegal to erase any printed part of the ballot, put any distinctive mark, or intentionally erase or mutilate the same, or make any mark other than the names of the candidates voted for.

The ballots we have examined furnish sufficient data that a great part of the voting mass are not well advanced in the matter of handwriting, resulting in various errors in the spelling of the names of the candidates. Many electors moisten with excess the lead of the pencil which is used in the booths in such a manner that they leave gross traces that look like erasures. Taking these circumstances into account, we are of the opinion that the ballots should be read with reasonable liberality, so that the reading should be in favor of the will of the elector, rather than in favor of the inefficacy of the ballot by reason of technical causes.

The conclusions of the court, after examining the ballots in question, are grouped herein, for the purpose of avoiding repetitions in passing upon the questioned ballots in each election precinct:

(A) The ballot in which only the initial letters of the Christian name and the surname of one candidate, or his surname only appears, or where there are written first, the surname, and then the Christian name, is valid for said candidate.

(B) The ballots, bearing the Christian name only or the Christian name and the initial of the surname of one candidate, should be rejected as insufficient to identify the person voted for.

(C) When the name and surname appear incorrectly written they should be admitted, whenever they give the same or similar sound, when read, to that of the true name of the candidate, under the rule generally known of "idem sonans"

(D) When the spelling of a name is very different from that of the name of the candidate that it is not possible to determine the will of the elector, the ballot should be rejected.

(E) When the name appearing upon the ballot is illegible and from its writing it is impossible to determine the intention of the voter, the ballot should be rejected.

(F) When there are two names voted for the same position for which the law authorizes the election of only one person, the ballot should not be counted in favor of any of those voted for.

(G) When the name of one candidate appears written, in two spaces of the ballot, it shall be counted in favor of the candidate for the position with respect to which he has presented his certificate of candidacy.

(H) When in a given space of the ballot there is a name that is erased and another clearly written, the ballot is valid for the latter.

(I) The distinguishing mark which the law forbids to be placed in the ballots is that which the elector may have placed with the intention of facilitating the means of identifying said ballot, for the purpose of defeating the secrecy of the suffrage which the law establishes. As this is a question of fact, it should be resolved with the ballot itself in view.

(J) If the mark or sign appears to have been accidentally placed, and it shall be so presumed unless there is evidence to the contrary, such as a comma or a period, a dash or a hyphen, between the name and the surname of a candidate, or in another part of the ballot, or if there are found traces of the letters "t" and "j" etc., or the first letter or syllable of the name, which the elector abandons in order to write another name; the perpendicular, parallel, circular, or sinuous lines which at times are found on the ballots, as if to indicate that the voter did not attempt to vote for the positions which appear to be so cancelled, these marks or signs will not be considered as distinguishing marks. Unless there is evidence to the contrary, the numbers which are written in order to indicate the number of persons voted for the position of councillor or the number of the date of the election such as "3," "June 3, 1919," will not be considered as distinguishing marks. Neither are the ballots invalidated by one or more circles placed in a space in which the voter failed to vote, for it is seen that his intention in placing said sign was

to indicate his desistance.

(K) Writing in a particular space the name of a person who is not a candidate for said position, or failing to fill blank spaces, will not be considered as distinguishing marks. Neither is it considered as a distinguishing or identification mark if upon the ballot appear the name of a woman, names with pet names, nicknames, names of councillors with the same surnames, or different surnames with the same name, names with surnames of Chinese origin, names of priests, or contemptuous or exclamatory names.

(L) When the ballot is signed by a voter as is the case with the ballot G-25 of the first precinct of the municipality of San Pablo which is signed "A. Dizon," and the ballot "T," signed on the back "Santiago Lasaga," of the fourth precinct of the municipality of Santa Cruz, it should be rejected, because the intention of the voter to identify his ballot is evident.

(LL) When there is an excess of candidates voted for councillor, the ballot shall not be annulled, and unless there is evidence to the contrary, the names in excess are not considered as signatures or as identification marks.

(M) The ballots written with lead pencil or ink, wholly or in part, will not be considered as marked for the purposes of section 452 of the Election Law, in the absence of proof of fraudulent intent.

(N) The fact that a ballot is accidentally torn does not annul it.

(O) The big traces of indelible pencils generally used in election precincts and the impressions of the fingers of the voter in handling his ballot are not considered distinguishing marks.

(P) The ballots which bear the prefixes: "Mr.," "Don" "Guinoo," "Hon.," "Dr." and the suffixes "hijo" (junior), "segundo," do not invalidate the ballot.

(Q) The ballots which bear the names of the candidates printed on slips of paper and pasted in any space of the ballot are considered as marked.

In conformity with the preceding conclusions, we affirm the resolutions rendered by the trial judge, admitting or rejecting certain ballots for the protestant or the protestee, except in the cases which are specified as follows:

### **BIÑAN**

First precinct—The ballots Nos. 14, 79, 80, 84, and 93 with the surname "Gomez" should be admitted. There are also admitted 8 ballots claimed by Gomez bearing the names "P. Gomez," "Felicia Gomez," "Feliciana Gumz," "Feligno Gomz," and "Felicecio Gomez." (Letters A and C.)

Second precinct.—Of the 6 ballots claimed by Gomez, all are admitted except ballot No. 25 which bears only the name of Gomez in the whole ballot, and which is almost illegible. (Let. E, J, and K.)

Third precinct.—Of the 14 ballots claimed by Gomez, all are admitted except No. 6 with the name "Feliciano," which is rejected. (Let. A, B, and C.)

Fourth precinct.—Ballots 20 and 21 claimed by Gomez are admitted. (Let. C.)

### **SANTA ROSA**

First precinct—The 17 ballots Nos. 20, 26, 28, 30, 32, 36, 38, 39, 41, 43, 47, 48, 55, 58, 62, 67, and 74 are admitted as valid votes for Gomez. Ballot K claimed by Cailles is admitted. (Let. C and K.)

Second precinct.—The ballot 1-A in which Cailles is voted for two positions should be admitted. (Let. G.)

There are admitted in favor of Gomez the ballots Nos. 1, 2, 5, 7, 9, and 19, ballots A-4, A-6, A-10, and A-11. (Let. B and J.)

The ballot No. 17, "Julican Gomes," is rejected and should be discounted against Gomez. (Let. D.)

Third precinct.—The ballots 1, "Ficia Gomez;" 2, "Pelicio Gomez;" 8, "Felictano Gom," 3 in all, are valid and counted for Gomez. (Let. C.) We have examined the 13 ballots for Gomez rejected by the inspectors, and we are of the opinion that 7 of them must be adjudicated in favor of Gomez. (Let. C and H.)

Fourth precinct.—The ballot B, "Juan Caillies" should be admitted in favor of Cailles. (Let. C.)

The ballot 9, "F. Ganez," is admitted. (Let. C.)

### **CALAMBA**

First precinct—The ballots Nos. 1, 2, 3, 6, 7, 8, 9, 10, and 13 for Gomez should be admitted. (Let. C, K, and O.)

The 8 ballots for Cailles rejected by the court should be admitted except ballot B where two names are voted for governor. Ballot A is admitted. (Let. C, I, J, K, and LL.)

Second precinct.—By agreement of the parties (p. 216, Part A) the protestant Cailles renounced his claim as to the 18 ballots rejected by the inspectors, marked from A-1 to A11, inclusive, and from A-15 to A-21, inclusive, so that 18 votes should be discounted against him from those granted to him.

The ballots No. 3, "Feliano Gmis" and 4, "Filemano Gonoy" should be counted in favor of Gomez. (Let. C.)

The ballots A, B, K, and Y claimed by Cailles should be admitted. (Let. J.)

Fourth precinct.—The ballots 1, 3, and 5 claimed by Gomez should be admitted. (Let. A and J.)

The ballots for Cailles D and I are admitted. (Let. K.)

### **LOS BAÑOS**

First precinct.—The ballot KK claimed by Gomez is admitted. It is not a ballot in excess.

So also the ballot K claimed by Cailles is admitted. (Let. J.)

Second precinct.—The 2 ballots AA and BB claimed by Gomez are valid. (Let. K.)

### **SAN PABLO**

First precinct.—The ballots C-1, C-2, C-3, C-4, C-13, C-15, and C-19 are valid votes for Cailles. (Let. H and J.)

The ballot G-24 is admitted for Gomez. (Let. C.)

Second precinct.—The ballots G-32, "gomes," G-38, and G-39 are admitted for Gomez. (Let. B and O.)

Third precinct.—The ballots G-54 and G-55 "pilicino Gomes" are valid votes for Gomez. (Let. C.)

Fourth precinct.—The ballots G-70, G-72, and G-78 claimed by Gomez are admitted. The ballot G-77 with an 0 in the space for Senator is admitted. (Let. A, K, and J.)

Fifth precinct.—The ballots Gomez G—103 and the ballots G-101, G-104 and G-105, with sinuous lines at the foot, are admitted. The ballots G-88, G-91 and G-100 are also admitted for Gomez. (Let. J and K.)

The ballots claimed by Cailles C-79, C-80, and C-86 should be counted for him. (Let. J and K.)

Sixth precinct.—The ballots G-126 and G-127 are not defective and must be counted in favor of Gomez. Also the ballot G-132, "Felano Gones." (Let. C.)

The ballot for Cailles, C-107, admitted by the court, should be rejected, because the name "Juan guis" voted for governor is not similar to that of the protestant. (Let. D.)

The ballots C-106, C-108, C-110, C-118, and C-122 claimed by Cailles are good and should be counted for him. (Let. A and K).

Seventh precinct.—The ballots G-144 and G-145 are valid votes for Gomez. (Let. C.)

The ballot 1-B, "Tuan Cailles" is valid vote for Cailles. (Let. C.)

Eighth precinct.—The ballots C-148, C-149, "Jucaellis" and C-150, "Jana Cailles" are admitted as valid for Cailles. (Let. C.)

The ballot G-155 is admitted for Gomez. (Let. A.)

Twelfth precinct.—The 8 ballots for Gomez marked 3 to 10, inclusive, which are said to be written by the same hand, are admitted for Gomez. The writing in the ballots shows some points of difference.

### **ALAMINOS**

First precinct.—The 10 ballots, rejected by the inspectors and claimed by Gomez, are admitted, including No. 4 in which the latter is voted for Representative and for governor. (Let. G, J, and K.)

Second precinct.—Of the 12 ballots which Gomez claims, 10 are admitted; ballots 2, 3, 10, and 11 are rejected by being countersigned; 15 and 16. for Felicia Gomez; 18 Flecano Gomez; 19 and 20 with an excess in the number of persons voted for councillors; and 21 with blank spaces for councillors. (Let. C, J, and K.)

Third precinct.—Ballot No. 1 is counted for Gomez. (Let. K.)

### **NAGCARLAN**

Fifth precinct.—The ballots 1, "Feciano Gomez," and 3, "Filis Gunis," are valid votes for Gomez. (Let. C.)

### **LILIO**

First precinct.—The ballots C-1, C-5, C-6, C-8, C-13, C-14, C-15, and C-18 are counted for Gomez. (Let. C and K.)

Second precinct.—The ballots D-3, D-4, and D-6 are admitted for Gomez. (Let. B and C.)

### **MAGDALENA**

First precinct.—The exact number of ballots in favor of Cailles found in the box is 167, and as the court adjudicated to him 168 it is clear that one vote must be discounted from the total for Cailles.

Two ballots are counted for Cailles which were rejected by the inspectors. (Let. M.)

Second precinct.—The ballots Nos. 2, 4, 5, 8, 12, 15, 17, 20, 23, 25, and 26, eleven in all, are admitted for Gomez. (Let. A, C, and K.)

### **MAJAYJAY**

First precinct.—The ballots in the boxes of this precinct having been counted, it appears that Cailles obtained 196 votes instead of 197 counted by the court, and Gomez 153, instead of 152; for which one vote must be discounted against Cailles and one more vote must be added to Gomez.

There is also discounted against Cailles one vote, ballot A, with the name "Juli." (Let. D.)

Second precinct.—Ballot 3, said to be countersigned with a line under the last name for councillor, is admitted for Gomez. (Let. J.)

Ballot Q for Cailles is rejected because it bears a mark of identification, to wit, a printed paper with the name of Eulogio Benitez. (Let. Q.)

### **CAVINTI**

First precinct.—Admitting the allegation of the appellant that the revision of the ballots of this precinct has not been asked by the parties, the adjudication made by the court must be modified in the sense of deducting from Cailles 4 votes and from Gomez 1 vote, according to the election certificate.

The 6 ballots marked 49 to 54 claimed by Gomez should be admitted, except No. 50 which bears the printed name of Eulogio Benitez. (Let. C, K, and Q.)

### **SANTA CRUZ**

Fourth precinct.—The ballots marked 1, 2, 4, 8, 12, 27, and 41 are valid votes for Gomez. (Let. C and J.)

The ballots I, P, Q, and R claimed by Cailles, said to be countersigned by lines in the upper part of the ballot, are given to him. The ballot signed on the back is rejected. (Let. J and L.)

Fifth precinct.—The ballots 1 to 5, inclusive, claimed by Gomez are counted for him. (Let. J.)

### **PAGSANJAN**

First precinct.—The ballots for Gomez marked 5 and 8, "Pelicano Gums" and "Filicia Gomes," are admitted. (Let. C.)

Third precinct.—The ballots A, D, H, and K claimed by Cailles are valid votes for him. (Let. C and LL.)

The ballot No. 1 for Gomez with the name "Ines Lanuza" for councillor is admitted. (Let. K.)

### **LOÑGOS**

Second precinct.—The ballots which Gomez claims, Nos. 1, 3, 4, 5, 7, and 9, are admitted for him. (Let. C and J.)

### **PAETE**

First precinct.—Ballots 1, 2, 3, 4, and 6 are awarded to Gomez. (Let. C and P.)

### **SINILOAN**

First precinct.—The ballots Nos. 1, 3, 6, 9, 12, 15, 17, 18, and 21, nine in all, are counted for Gomez. Ballot A for Cailles in which he is voted for two positions is admitted. (Let. P and J.)

Second precinct.—The exact number of votes obtained by Cailles should be 183 (fol. 377, part J) and not 185, as erroneously appears in the decision.

The ballots 1, 3, 4, and 5, are admitted for Gomez. (Let. C and J.)

### **MABITAC**

Sole precinct.—To Gomez are awarded 3 ballots claimed by him, Nos. 1, 3, and 4. (Let. H and K.)

### **FAMY**

Sole precinct.—Ballot No. 1 claimed by Gomez is given to him. (Let. K.)

The' 10 ballots claimed by Cailles are admitted for him. (Let. A, C, and J.)

The result of the preceding revision shows that there should be awarded to Gomez and to Cailles, or discounted from them respectively, the votes indicated as

Municipality

Precinct.

Gomez

Cailles

+

-

+

-

Biñan.....

1

13

.....

.....

.....

Do.....

2

5

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.....

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Do.....

3

13

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.....

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Do.....

4

2

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Santa Rosa.....

1

17

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1

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Do.....

2

10

1

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1

Do.....

2

10

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Do.....

3

10

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1

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Calamba.....

1

9

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7

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Do.....

2

2

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4

18

Do.....

4

3

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2

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Los Baños.....

1

1

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1

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Do.....

2

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San Pablo.....

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Alaminos.....

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Do.....

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Do.....

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Nagcarlan.....

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Lilio.....

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Do.....

2

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1

Magdalena.....

1

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1

Do.....

2

11

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2

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Majayjay.....

1

1

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2

Do.....

2

1

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1

Cavinti.....

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Santa Cruz.....

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Do.....

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Pagsanjan.....

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Do.....

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Loños.....

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Paete.....

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Siniloan.....

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Mabitac.....

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Famy.....

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10

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Total.....

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214

2

56

31

Adding by means of an adding machine the votes obtained by each of the contending parties, according to the judgment, we find an excess of 2 votes against Gomez, so that the true total of the votes of the protestant and the protestee are 8,797, and 8,566 respectively. If we compute all the votes that should be added or discounted, according to our revision, including the votes of certain illiterates, the slight differences between the recount of the court and the election returns, and the votes of the municipality of San Pedro which were annulled, the final result is that the protestant-appellee Juan Cailles obtained 8,937 votes, and the protestee-appellant Feliciano Gomez 8,754 votes, as appears in the following tables:

Cailles.

Gomez.

According to the decision, they obtained.. ..

8,797

8,566

Votes rejected by the court which should be admitted.....

56

214

Ballots of illiterates discounted by the court which

should be added:

Cailles.

Gomez.

Lilio, first precinct.....

30

119

Lilio, third precinct.....

4

38

Cavinti, first precinct.....

47

34

Cavinti, second precinct.....

68

5

Loños, first precinct.....

29

2

Loños, second precinct.....

34

10

\_\_\_\_\_

212

208

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=====

212

208

\_\_\_\_\_

\_\_\_\_\_

9,065

8,988

Defective ballots admitted by the court

which should be rejected.....

Ballots to be discounted because of the

23

2

differences between the recount of the

courts and the certificates:

Magdalena, first precinct.....

1

.....

Majayjay, first precinct.....

1

-1

Cavinti.....

4

1

Siniloan.....

2

.....

\_\_\_\_\_

31

2

=====

=====

31

2

\_\_\_\_\_

\_\_\_\_\_

9,034

8,986

Annulled votes of San Padro which should be discounted...

97

232

\_\_\_\_\_

Total of votes of San Pedro which should be discounted.

8,937

8,754

=====

=====

Pularity of Cailles.....

183

In view of what has been said, reversing the judgment in so far as it conflicts with this decision and affirming it in so far as it does not conflict, we declare and adjudge that the protestant-appellee Juan Cailles was elected at the general elections held in the Province of Laguna on June 3, 1919, for the position of provincial governor, having obtained 8,937 votes against 8,754 votes of the protestee and appellant Feliciano Gomez and 2,668 obtained by Apolinar Barbaza. We therefore order the Court of First Instance of Laguna to issue a mandamus to the provincial board of canvassers directing it to correct its canvass in conformity with the result arrived at by this court and to issue in favor of Cailles the certificate of election prescribed by law, with costs against the appellant. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Ostrand, Johns, and Romualdez, JJ., concur.

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